

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1224 OF 2016
IN
WRIT PETITION NO.11277 OF 2014**

Mrs. Tejinder Kaur Sethi ... Applicant
Versus
Apollo Munich Health
Insurance Company Ltd. ... Respondent

Mr. Devendra S. Joshi – Advocate for the Petitioner in WP 11277 of 2014.
None Present for the Applicant in CAW 1224 of 2016.
Mr. C. D. Mali – AGP for the Respondent No. 2/ State

CORAM : S. M. MODAK, J.

DATE : 15th JULY 2022

P.C. :

1. Today the matter is listed for hearing of the Civil Application No. 1224 of 2016. By the said Civil Application, the present Applicant – original plaintiff has sought withdrawal of the amount of Rs. 50,00,000/- deposited by the Respondent-original defendant in this Court. The said amount is deposited by the Respondent as per the condition imposed by this Court while granting the stay of the order of Appellate Bench of Small Causes Court dated 21/09/2014. Accordingly, the amount is deposited in this Court and now the applicant wants its withdrawal. No one has appeared for the applicant in the morning sessions and even in the second

session when the matter is called out.

2. During the hearing of the application, learned counsel for the Respondent apprised me about the facts of the case and the two orders passed, one by the trial court and second by the Appellate Bench of the Small Causes Court. With the assistance of learned counsel for the Respondent they are perused.

3. The trial Court as per the Order dated 13/11/2013 was pleased to direct the defendant-Petitioner in Writ Petition to deposit a sum of Rs. 5,00,000/- per month for the subsisting month on or before 10th of each month. This direction was given in an application filed by the plaintiff-Respondent. As per the said order, the trial Court also restrained defendant from creating 3rd party interest in respect of licensed premises.

4. The said Order was challenged by the defendant-Petitioner by way of Misc. Appeal no. 16 of 2014. The Petitioner has not succeeded in that appeal and the direction to deposit the amount was not interfered with. So direction to deposit Rs. 5,00,000/- per month continued only with modification that liability of the Petitioner was restricted till the month of September 2014.

5. My attention is invited to the agreement of leave and license executed on 22/11/2007 at page no. 162. As per the said agreement the Respondent-Licenser has permitted the Petitioner-licensee to use the

licensed premises for a period of five years.

6. The duration of the license was about to expire on 22/11/2012. My attention is specifically invited to Clause no. 4 pertaining to rent payable, Clause no. 5 pertains to security deposit and Clause no. 7 pertains to property taxes. The Petitioner has deposited Rs. 63,72,000/- with the Respondent as a security deposit. The Respondent is expected to hold this amount till the time possession of licensed premises is not handed over to her by the Petitioner for any of the reasons mentioned therein.

7. There is a dispute amongst the parties that the Petitioner has not returned the security deposit in spite of the fact that the Petitioner has expressed desire. Clause No. 5 further states that if there are arrears, it can be adjusted from the security deposit. Further more the Petitioner is entitled to claim 15% interest on the amount of security deposit, if the Respondent fails to return the same after handing over the possession.

8. The Petitioner has handed over the possession on 30/09/2014. It is as per the time fixed by the First Appellate Court.

9. The dispute between the parties pertains to who is at fault that is to say whether Petitioner or Respondent, so far as not handing over the possession in spite of desire shown by the Petitioner, whether Respondent is at fault in withholding the security deposit and whether the Petitioner is still liable to pay the amount of compensation claimed by the Respondent

and there is also dispute about the property taxes as now claimed by the Respondent.

10. The scope of enquiry in this Petition is restricted to the above issues. However the fact remains that the Petitioner has deposited the amount of Rs. 50,00,000/- in this Court as per Order passed by this Court on 13/07/2015. This fact is reiterated in the Order 27/08/2015 by this Court when review is sought on behalf of the Petitioner. While passing the order dated 13/07/2015, this Court has observed about the liability of the Petitioner to pay compensation at the rate of Rs. 5,00,000/- per month from December 2013 to September 2014. This is time when possession is handedover. At that time the Respondents were heard. So when Petitioner has already deposited the amount of compensation which they were liable to deposit as per the Order of the First Appellate Court, no purpose would be served by keeping the petition pending.

11. For the reasons mentioned above, writ petition is taken up for final hearing and when it is also consented on behalf of the Petitioner.

12. My attention is also invited to the observation made by the Trial Court as well as First Appellate Court restraining the Respondent-plaintiff from withdrawing the amount of compensation till the disposal of the suit. If said condition is there, it is also difficult for this Court to accept the request for withdrawal by way of Civil Application unless and until the

said direction is interfered with. Suit is to be decided by the Trial Court. So it is better to transfer the amount deposited herein to the Trial Court. So it will be in the interest of both the parties to decide the prayer for withdrawal by the trial court itself.

13. In view of the above direction, following Order is passed:

ORDER

- (i) Writ Petition is disposed of in above terms.
- (ii) Civil Application is also disposed of.
- (iii) The amount of Rs. 50,00,000/- deposited in this Court alongwith interest be transferred to the Court of Small Causes.
- (iv) No observation is made on merits and trial Court is at liberty to decide the issue as per the merits.

(S. M. MODAK, J.)